calculates that the total annual net income in dollars to the plaintiff would have been $1,493,277.00.

The court is of the opinion that the plaintiff is entitled to judgment against the defendant for $1,493,277.00. This figure best represents the amount of damage suffered by the plaintiff as a direct result of the defendant's misconduct.

The court will not apply any discount figure to this just mentioned net income total. Under all the evidence, including the plaintiff's loss of depletion allowance and other tax loss the amount of any reasonable discount figure is more than offset.

In addition, the court specifically finds that the evidence does establish with reasonable certainty the monetary damage in question to the plaintiff; that a discount factor should not be applied under the instant facts; and that the defendant is not entitled to any credit for interests held by Dr. Devine, C. D. Snakard and J. N. Snakard, since all the evidence indicates that the plaintiff has no interest, secret or otherwise, in such properties.

Moreover, the plaintiff took all reasonable steps to mitigate his damages caused by the defendant and the defendant is not entitled to any credit or offset for an alleged failure by plaintiff to properly mitigate his own damages.

Within seven days counsel should prepare for the court's signature findings of fact and conclusions of law which conform with this letter as to the damage feature of this suit, together with a final written judgment which reflects the court's rulings on both liability and damages.

Very truly yours,

W. R. Wallace

Filed December 31, 1958.

Findings of Fact and Conclusions of Law

This cause being heard before the Honorable W. R. Wallace, U. S. District Judge on July 14, 1958, upon the sole issue of the amount of recovery to which the plaintiff may be entitled, by reason of loss of oil and gas leases involved in this cause and occasioned by acts and omissions of the defendants, as reflected by Findings of Fact and Conclusions of Law heretofore entered in this cause upon the issues of liability and measure of damages; and the Court, having heard testimony offered by the respective parties, and having considered Briefs by counsel for plaintiff and defendants, and being fully advised, now enters these additional Findings of Fact and Conclusions of Law as follows:

1) On July 15, 1957, this cause was heard before the Court upon the issue of liability, if any, of defendants to plaintiff, evidence was offered by the respective parties, and the cause submitted on Briefs; and, on May 27, 1958, the Court entered its written Findings of Fact and Conclusions of Law, which are hereby referred to and incorporated as part of the Findings of Fact and Conclusions of Law in this cause, as applicable to the issue of liability of the defendants to plaintiff.

2) Pursuant to regular setting, this cause was heard on further Pre-Trial by the Court on June 18, 1958, at which time, the issue of measure of damages was presented to the Court by plaintiff and defendants; and, upon direction of the Court, Briefs were submitted by the respective parties. On July 10, 1958, the Court entered its memorandum opinion as to the measure of damages sustained by plaintiff because of the loss of plaintiff's oil and gas leases involved herein, it being held by the Court, as follows:

a) Plaintiff is entitled to recover those damages which can be shown with reasonable degree of certainty resulting from defendant's breach of contract.

b) If plaintiff can establish with the required certainty the amount of oil which would have been produced had the defendants performed its obligations and demonstrate the cost of drilling and production, the Court then can allow the defendants the credits to which it is entitled under the agreement, and arrive at a figure which represents the actual loss suffered by plaintiff.

3) On July 14, 1958, this cause was heard upon the issue of plaintiff's recovery. Evidence was offered by the respective parties, and the cause sul itted to the Court upon Briefs; and, after consideration of t > evidence and Briefs, the Court finds as follows:

a) Under date of December 30, 1958, the Court entered a memorandum decision fixing the amount of loss sustained by plaintiff at $1,493,277.00, which memorandum opinion is incorporated herein by reference; and, pursuant to such opinion, the Court further finds as follows:

1) It has been established with a reasonable degree of certainty that, had the leases that were lost by the plaintiff as a result of the acts and omissions of the defendants been operated to final conclusion, and exhaustion of the productive capacity of the leases, they would have produced a total of recoverable oil amounting to 1,979,800 barrels.

2) That by reason of the foregoing, plaintiff has been damaged in the sum of $1,493,277.00.

b) The Court finds that, in arriving at the net loss of plaintiff, the Court has taken into consideration the present value, net to plaintiff, of the loss sustained by plaintiff; and that, under all of the facts and circumstances before the Court in this case, no other discount factors should properly be allowable, and that it would be inequitable to allow any additional discount factor that would reduce

the present net amount of plaintiff's loss below the figure above set forth.

c) The Court finds that the plaintiff exercised proper and reasonable effort to mitigate his damage; and that the interests in the leases which were lost by the plaintiff that are now held by Dr. Devine, C. D. Snakard and J. N. Snakard were acquired by these parties through the efforts of the plaintiff to mitigate his damage, and plaintiff has no interest, secret or otherwise in such properties. Defendants are not entitled to any credit or offset as against the net figure of plaintiff's loss above set forth.

Conclusions of Law

Under and pursuant to the Findings of Fact above set forth and referred to, the Court makes Conclusions of Law as follows:

1) The Court has jurisdiction of the parties and subject matter involved herein.

2) The defendants are liable to plaintiff for all reasonable damage sustained by plaintiff, under and pursuant to conclusions of law heretofore entered by this Court under date of May 27, 1958, and made part hereof by reference.

3) By reasons of the acts and omissions of the defendants set forth in the Court's Findings of Fact and Conclusions of Law dated May 27, 1958, plaintiff is entitled to recover from defendants a net sum of $1,943,277.00, and all costs of this action, which has been proved by plaintiff with reasonable certainty.

4) Plaintiff has exercised reasonable and proper efforts to mitigate his damages; and now holds no interest, secret or otherwise, in the properties that have been lost, as above set forth, due to the acts and omissions of defendants.

5) Judgment shall be entered in favor of plaintiff and against the defendants under the date of these Findings of Fact and Conclusions of Law.

Dated January 6th, 1959.

W. R. Wallace
U. S. District Judge

Approved, John B. Dudley, Jr., Att'y for plaintiff. Approved as to Form, T. Murray Robinson, Leon Shipp, Attorneys for defendants.

Filed January 6, 1959.

Journal Entry of Judgment

This cause being heard on January 6th, 1959; and it appearing that the Court has heretofore entered its Findings of Fact and Conclusions of Law covering all issues in this cause; and that plaintiff is entitled to judgment against the defendants in the amount hereafter set forth.

It is Therefore Ordered, Adjudged And Decreed that plaintiff have and recover judgment against the defendants in the sum of One Million, Four Hundred Ninety-Three Thousand, Two Hundred Seventy-Seven Dollars ($1,493,277.00), with interest according to law and all costs of this action.

W. R. Wallace
U. S. District Judge

Filed January 6, 1959.

APPENDIX B

FRANKFORT OIL COMPANY, a Division of Carstairs Bros. Distilling Company, Inc., a foreign corporation, *Appellant*,

v.

W. F. SNAKARD, *Appellee*.

No. 6114

United States Court of Appeals
Tenth Circuit

May 18, 1960

Rehearing Denied July 21, 1960

Before HUXMAN, PICKETT and BREITENSTEIN, Circuit Judges.

BREITENSTEIN, Circuit Judge.

Appellee-plaintiff Snakard recovered judgment against appellant-defendant Frankfort Oil Company in the amount of $1,493,277 as damages arising from the alleged misconduct of Frankfort in connection with certain transactions between the parties pertaining to Oklahoma oil and gas properties. Jurisdiction is based upon diversity.

[1] The complaint in the court below contained two counts, the first alleging breach of contract and tort and the second charging conspiracy. There were seven defendants, one of whom, Frankfort, asserted a counterclaim against Snakard. The record as filed in this court did not show disposition of all of the claims or as to all of the defendants, and there was no compliance with Rule 54(b), F.R. Civ.P., 28 U.S.C.A., relating to judgments on multiple claims. Because of doubt as to whether the record presented an appealable judgment,[1] we ordered that the parties

[1] United States v. Martin, 10 Cir., 267 F. 2d 764, 772.

show cause as to why the appeal should not be dismissed. In response the parties filed a stipulation establishing the disposition or abandonment of all claims except those asserted against Frankfort in the first count of the complaint. This stipulation will be considered as a supplemental record in the case.[2] The issue for determination is the liability of Frankfort under the first count.[3]

Snakard held 13 leases covering 12 tracts of land with a total area of 1,280 acres in Lincoln County, Oklahoma. These leases were for a period of one year with no provision for delay rental and required drilling on or before July 1, 1955, to extend their terms.

On November 11, 1954, Snakard entered into four different but related contracts with Frankfort covering the 1,280-acre block. In substance, Snakard agreed to assign to Frankfort a one-half interest at $1 per acre and to take care of certain title clearance matters with Frankfort to participate in the cost thereof. Snakard contracted to drill a well, later known as Stanolind No. 1, at an agreed location on the block, to a depth adequate to test the Arbuckle formation. For the drilling of this well Frankfort was to pay Snakard a sum considerably higher than is customarily paid in the area. The purpose of the increased payment was to give Snakard a profit of approximately $20,000 for lease acquisitions. If production was obtained, Frankfort was to be the operator of the block under a joint operating contract.

The Stanolind No. 1 well was drilled in January, 1955, to its maximum depth and secured production in the second Wilcox sand, but because of water trouble and mechanical difficulties it was not completed as a commercial producer. Two other wells, the Erwin No. 1 and the Meador's Estate

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[2] See Rule 75(h), F.R. Civ. P.

[3] A cross-appeal No. 6115, Snakard v. Frankfort Oil Company, was dismissed on motion of cross-appellant at the time of oral argument. The issue in the cross-appeal was the alleged inadequacy of the judgment.

No. 1, were completed in February and April, 1955, and secured oil production in the second Wilcox sand. In the period March to June, inclusive, 1955, five other wells were drilled.[4] None of these obtained oil production but some were completed as shut-in gas wells.

By the middle of June, 1955, Frankfort had drilled on seven of the tracks. On June 20 Frankfort notified Snakard that it would make no effort to validate the Lee and Simpson leases. Without notice to Frankfort, Snakard, on July 1, 1955, commenced drilling on the Christian and Thomas leases in an attempt to validate them. On the Christian lease he withdrew and did not complete a well. Snakard had financial difficulties and became involved in a lawsuit questioning the continuity of his drilling on the Thomas lease. As a result he lost his interest in the Thomas lease.

Between July 1, 1955, and July, 1958, three commercial oil wells were developed by other parties on the Christian lease, six on the Thomas, and one on the Simpson. The basis for the claim of damages is the loss to Snakard resulting from the lack of validation of the Christian, Thomas, and Simpson leases.

Snakard contends that Frankfort breached its contractual obligations by not drilling on all the leases before the termination thereof. As production was secured, the operating agreement became effective. Therein, Frankfort was made the operator of the jointly-held leases. Under the agreement, if either party desires to drill a well he shall give notice to the other party who shall then have 10 days within which to elect to participate. If the election is to participate, then the "Operator [Frankfort] shall drill such well for the Joint Account and at the joint cost of the parties, and such well shall for all purposes be a jointly-owned well." If the election is not to participate, then "the party desiring to drill may nevertheless drill, complete and equip the well at its own cost and expense." The

[4] The Magnolia No. 1, Clark No. 1, Nitner No. 1, Erwin No. 2, and Amerada-Stanolind.

operating agreement is on a printed form which provides that as to any well not drilled for the Joint Account the participating party shall have entire ownership. This was modified to provide that if Snakard is a non-participating party on any well Frankfort should have a ⅞ working interest and Snakard a ⅛ working interest until Frankfort, out of ⅜ of the working interest, shall have reimbursed itself in a sum equal to 200% of ½ of the well cost. Thereafter, Frankfort and Snakard should each have ½ of the working interest.

Admittedly, Frankfort was obligated to drill one well.[5] The trial court so held but went on to decide that Frankfort "elected to drill the remaining undeveloped leases and in then failing so to do breached its contractual agreement with plaintiff."

Election to drill is said to result from Frankfort's April 8, 1955, letter to Snakard which read in part: "* * * there are eight drilling commitments remaining in said tract and you are hereby notified so that you may make your election. Further, that Frankfort intends to contract this work on the basis as the previously drilled wells in said tract, or to farm out some of the commitments, whichever is the more practical." If this letter was intended as a notice of desire to drill it was defective as the operating agreement required such notice to state the depth to which the well was to be drilled and the location thereof, and such statements were not made.

Further, it is urged that an election to drill resulted from a so-called caveat filed by Frankfort for record in the office of the county clerk of Lincoln County, Oklahoma, on March 8, 1955. At that time Snakard had not executed all of the lease assignments to which Frankfort was entitled. Previously, the relations between the parties had become strained because Frankfort had refused to pay Snakard the sums due in excess of the actual drilling costs

[5] The Stanolind No. 1.

of the Stanolind No. 1 well and also refused to pay certain title correction expenses incurred by Snakard. The Frankfort refusal to pay resulted from a suit filed in December, 1954, by one Burkett against Snakard. Burkett asserted an ownership of a one-half interest in the leases included in the Frankfort-Snakard tranctions.[6]

The caveat refers to the Frankfort-Snakard contracts, describes the land covered by the leases, and states:

> "Now, Therefore, the undersigned Frankfort Oil Company * * * does hereby notify the world that it has performed all of the terms of said contract with W. F. Snakard and is entitled to and is the owner of an undivided 7/8ths interest in and to all of the oil and gas leases covering the above described land and any party purchasing same does so at his own risk and peril and with notice of the rights of the undersigned adverse thereto."

Such document did not meet the requirements of the operating agreement as to a notice of intent to drill. As neither it nor the letter of April 8, 1955, was in conformity with the provisions of the operating agreement, it might well be found that Frankfort had never notified Snakard of an intent to develop the undrilled leases. In the absence of a notice of such intent no drilling obligation, beyond that for the first well, rested upon Frankfort. Nevertheless, the trial court found that Frankfort had elected to drill and it may be that such is a reasonable inference to be drawn from the circumstances. The question then is the effect of such election.

The operating agreement provided that when notice of intent to drill was given and the other party chose to participate, the operator "shall drill" and that when the election was not to participate, the party giving the notice "may

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[6] After the Burkett suit was filed Frankfort was made a party. This suit was disposed of by a judgment in favor of Snakard on June 30, 1955.

nevertheless drill." Snakard did not elect to participate. Hence, Frankfort, as the notifying party, had the right to drill but, as the operator, had no obligation to drill.

Snakard seeks to avoid this conclusion by asserting that the mentioned provisions relate to the division of expenses and not to the obligation to drill.[7] The position is not well taken as the provisions refer both to the obligation to drill and the responsibility for the expenses.

The last sentence of the paragraph, relating to notice of intent to drill and election to participate or not, reads thus:

> "Operations for the drilling of any well under the provisions of this paragraph must be commenced within ninety (90) days after the initial notice is given, and not thereafter."

[2, 3] Counsel for Snakard argue that the use of the word "must" obligates the notifying party to drill whether or not there is participation. The argument is not persuasive. All the provisions of the paragraph have to be considered together and given consistent effect if that is possible.[8] The provisions of the paragraph which preceded the quoted sentence provided that when there was a notice to drill and an election to participate, the operator shall drill. When a notice to drill was followed by an election not to participate the notifying party may nevertheless drill. The distinction is not eliminated by the quoted sentence. The effect of the 90-day provision is to require that if there is participation the well must be commenced within 90 days, and if there is an election not to participate the right to drill must be exercised within 90 days. Such

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[7] The contract language relating to the situation when there is an election to participate reads: "Operator shall drill such well for the Joint Account and at the joint cost of the parties, and such well shall for all purposes be a jointly-owned well." The language applicable when there is no election to participate is: "the party desiring to drill may nevertheless drill, complete and equip the well at its own cost and expense."

[8] Moyer v. Walker, 10 Cir., 276 F. 2d 681.

a construction gives effect to all the provisions of the contract. If a different construction were adopted, a party, by electing not to participate, could force the other party to drill at its own expense. This would be inconsistent with the provision which recognizes only a right, not an obligation, to drill when the election is not to participate. The Oklahoma rule is that " '[t]he intention of the parties must be deduced from the entire agreement, and every provision must be construed so as to be consistent with every other provision if possible, and that construction adopted which gives effect to every part of the contract.' "[9] The application of this rule to the case at bar requires the conclusion that, as a matter of law, the trial court erroneously concluded that Frankfort was obligated to drill each lease and breached its contract by failure to do so.

An additional argument advanced by counsel for Snakard should be mentioned. They contend that the effect of the actions of Frankfort, indicating an intent to drill, placed Snakard in an unfair position and, hence, Frankfort was required to drill. They insist that by refusing to participate Snakard became obligated to pay the drilling costs and could not take action to validate the leases by himself.

Assuming that the notices of intent to drill complied with the operating agreement as Snakard now contends, Snakard could have obligated Frankfort to drill by electing to participate. He did not do so. Instead, his lawyer replied to Frankfort's April 8 letter by saying that Frankfort had no right to demand an election but was obligated to drill all leases.[10] The position so taken was contrary to the

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[9] Postier v. Postier, Okl., 296 P. 2d 138, 139-140. Cf. Phillips Petroleum Co. v. McCormick, 10 Cir., 211 F. 2d 361, 364, and Occidental Life Ins. Co. of California v. Marmaduke Corbyn Agency, 10 Cir., 187 F. 2d 553, 555.

[10] The pertinent paragraphs of the letter are these:

"After careful consideration of all agreements between you and Mr. Snakard I am advising him that you have no right to demand any election from [him] but that you are required as the operator to drill and equip all the wells in question and to pay the expenses therefor and to receive reimbursement from

November 11, 1954, contracts. It is not now relied on by Snakard.

By the contracts, if Snakard chose not to participate, and Frankfort drilled, Frankfort could reimburse itself, out of production from the well, in an amount equal to double that which Snakard's share of the drilling costs would have been had he elected to participate. If the hole was dry, the entire cost would be borne by Frankfort. Having made such agreements, the parties were bound thereby. There is no claim that the written instruments did not fairly and accurately express the agreements of the parties. We need not consider here what might have been the situation if Snakard had started to drill before the terminal date and Frankfort had objected. Indeed, on two of the leases he did commence drilling operations. Although Snakard may have had faulty legal advice, that fact does not impose on Frankfort a drilling obligation which did not exist under the contracts.

[4] The second claim of contract violation is based upon the alleged failure of Frankfort to disclose to Snakard geological and geophysical information pertaining to the oil structures on the leased acreage. The operating agreement provides that the non-operator (Snakard) has the right of access to the leased premises, of inspection of the log, samples and cuttings from wells drilled, and of inspection and audit of the operator's books. Snakard was denied none of these rights. Frankfort had seismographic surveys and other geophysical work done on the properties. There is nothing in the operating agreement which requires Frankfort to furnish reports on such work to Snakard. Unless the failure to divulge such information

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the three-eighths of the seven-eighths working interest of W. F. Snakard as outlined in your letter of October 12, 1954.

"I am advising Mr. Snakard further that your obligation to drill under the contracts extends to all of the leases, that you do not have the right to refuse to drill upon any of such leases, and that you must drill on each property within the time specified in the leases."

is tied in with the breach of a fiduciary duty, it is not in violation of the contract.[11]

The third claim of breach of contract relates to the contention that the contract created a joint adventure which in turn created a fiduciary relationship which was breached by Frankfort. The argument in support thereof is beclouded by claims of fraud and slander of title.

[5] Fraud is asserted to exist because of misrepresentations by Frankfort that the potential oil field lay to the north and east of the Erwin No. 1 well, whereas information in possession of Frankfort disclosed, and drilling ultimately developed that the potential field was to the south and east. The brief for Snakard argues that these misrepresentations were made for the purpose of forcing Snakard into a farm-out agreement with Inland Oil Company. The difficulty is that the representations were never believed nor acted upon by Snakard. He consistently maintained that the field lay to the south and east. He refused to enter into the farm-out. Be that as it may, Rule 9(b), F.R.Civ.P., requires that the circumstances constituting fraud must be alleged with particularity.[12] Here, none of the circumstances relied on in the brief to establish fraud are covered by allegations in the pleadings.[13] Moreover, there are no findings by the trial court which would sustain a judgment based upon fraud. The circumstances presented to establish fraud merit consideration only inso-

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[11] Counsel for Snakard make much of the contention that the geological and geophysical surveys were charged in part against Snakard's account. This does not change the situation. There is no claim that Snakard ever paid such charges and, indeed, the charges would be improper. The point urged goes only to the accounting between the parties, not to the right of Snakard to the information.

[12] See C. Robert Ingram, Inc. v. Chrysler Corporation, 10 Cir., 256 F. 2d 684, 687; Cf. Nolan Bros. Inc., v. United States, 10 Cir., 266 F. 2d 143, 145-146.

[13] So far as the record before us discloses there was no pre-trial order. This is the type of a case in which great benefits could have been obtainable from an effective pre-trial conference and a definitive pre-trial order.

far as they bear upon a breach of the fiduciary relationship asserted to exist by reason of the contracts.

Snakard contends that Frankfort slandered his title by filing the caveat for record. A lawyer for Frankfort testified that he filed the caveat to protect Frankfort's interests because Snakard had not executed all of the lease assignments to which Frankfort was entitled. The caveat referred to the 1954 contracts, described the leased land, and claimed a 7/8 interest in the leases for Frankfort. The agreements themselves could have been filed. The caveat is no more objectionable than the agreements, except for the claim of a 7/8 interest. By the contracts, as to all wells after the first, Frankfort, in wells in which Snakard elected not to participate, had a 7/8 interest until reimbursed up to 200% of Snakard's share of the drilling costs. Thus, in some instances, Frankfort's interest was 7/8 and in some 1/2.

[6-9] The Oklahoma rule is that the principal element in a suit for slander of title is malice.[14] By filing the caveat Frankfort was asserting an interest in the properties under its contracts with Snakard. It had a right to do this unless it was actuated by some wrongful motive which would establish malice.[15] The question of malice is for the trier of the facts.[16] The case at bar was tried to the court and the court made no finding of malice. No question is raised by Snakard in regard to the omission of such finding. It follows that the judgment cannot be sustained on the theory of slander of title.

[10, 11] By their November 11, 1954, contracts the parties entered into a common undertaking involving jointly-owned

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[14] Keiser v. Kile, 166 Okl. 41, 26 P. 2d 194, 195. Cf. R. Olsen Oil Co. v. Fidler, 10 Cir., 199 F. 2d 868, 872, and Berryman v. Sinclair Prairie Oil Co., 10 Cir., 164 F. 2d 734, 736.

[15] Ward v. Mid West & Gulf Co., 97 Okl. 252, 223 P. 170, 171. Cf. 4 Summers, Oil and Gas, § 660, p. 49 (1938).

[16] New England Oil & Pipe Line Co. v. Rogers, 154 Okl. 285, 7 P. 2d 638, 643.

property and a sharing of the profits. They were engaged in a joint adventure.[17] The relationship so created was fiduciary in character and required the utmost good faith on the part of both parties.[18] The extent and effect of such relationship is determined by the written agreements between the parties defining and delineating the powers and rights of each. In such a situation it is presumed that they delegated all the powers they wished to confer upon each other and withheld all powers or authority not affirmatively delegated.[19] The relationships between them are controlled by the terms of their agreements voluntarily made.[20]

[12] Frankfort is said to have breached its fiduciary duty by withholding geological and geophysical information. There was no contractual obligation on Frankfort to divulge that information. As noted above, the contracts did entitle Snakard to certain information and no claim is asserted that any such information was withheld from him. Snakard's argument in this regard is a plea that we add to the contract a provision requiring that Frankfort furnish all geographical and geophysical data. We are without power to rewrite the contract for the parties.

The filing of the caveat is asserted as a breach by Frankfort of its fiduciary duty. Frankfort had the right to give notice of its interest in the property. The document filed did not describe that interest with complete accuracy. At the time it was filed the leases were all in effect. The caveat had no bearing on the rights of the parties during

[17] Eagle Picher Co. v. Mid Continent Lead & Zinc Co., 10 Cir., 209 F. 2d 917, 919; Kasishke v. Baker, 10 Cir., 146 F. 2d 113, 115, certiorari denied 325 U.S. 856, 65 S. Ct. 1185, 89 L. Ed. 1976.

[18] Vilbig Const. Co. v. Whitham, 194 Okl. 460, 152 P. 2d 916, 919; Kaye v. Smitherman, 10 Cir., 225 F. 2d 583, 594, certiorari denied 350 U.S. 913, 76 S. Ct. 197; 100 L. Ed. 800.

[19] Taylor v. Brindley, 10 Cir., 164 F. 2d 235, 241.

[20] Holmes v. Keets, 80 U.S. App. D.C. 327, 153 F. 2d 132, 133. Cf. Champlin v. Commissioner of Internal Revenue, 10 Cir., 71 F. 2d 23, 27, footnote 3.

the effective period of the November 11, 1954, agreements and of the leases covered thereby. Those rights were controlled by the contracts. As to leases which Frankfort did not validate by drilling, the failure to withdraw the caveat after July 1, 1955, might have resulted in a slander of title but not in a breach of a contractual fiduciary obligation. As we have shown, the claim of slander of title fails because the essential ingredient of malice is lacking.

[13] A further charge of misconduct in violation of the asserted fiducial duty is that Frankfort misrepresented the facts as to the preferred development of the leased area by informing Snakard that the greatest potential was to the north and east of the Erwin No. 1 well when in fact the data available to Frankfort disclosed that the field lay to the south and east of that well. These misrepresentations were allegedly made to induce Snakard to enter into a farm-out agreement with Inland Oil Company. The claim of falsity is based on the assertion that the geological and geophysical information in possession of Frankfort showed the field to lie to the south. The interpretation of such data involves opinion and judgment. Otherwise the element of uncertainty so characteristic of the oil business would be greatly reduced in importance. The officials for Frankfort attempted to justify their opinion that the field lay to the north. Snakard was equally insistent that the field lay to the south. The substantiation of Snakard's opinion by later drilling shows that his judgment was the better. The opinions and conclusions of Frankfort did not breach any contractual fiducial duty unless they resulted in some overreaching of Snakard. The record disclosed no such overreaching.

After the completion of the Erwin No. 1 well, the president of Inland offered Snakard $100,000 for his interest in the leases. Snakard refused to sell. Frankfort then proposed the farm-out to Inland. The trial court made no findings as to the details of this proposal and the testimony with relation thereto lacks clarity. There is attached

to answers made by Snakard to interrogatories propounded to him an unexecuted agreement wherein Inland would drill two wells without expense to Frankfort and Snakard.[21] Upon the completion of these wells to the designated horizon, Frankfort and Snakard would jointly assign an undivided half interest in a total of 120 acres covered by the Christian and Thomas leases.[22] Whatever the advantages or disadvantages of such an arrangement to Snakard may have been, the matter is of little importance now as Snakard rejected the farm-out. The leases were lost by failure to drill. The obligation to drill depended upon the provisions of the contracts. Such obligation was neither enhanced nor diminished by opinions concerning the area with the greatest potential for development.

Snakard further charges that the conduct of Frankfort was designed to eliminate the interest of Snakard so that Frankfort could toplease.[23] This is answered by the trial court's finding, not now attacked, that: "Defendant [Frankfort] did not later [after July 1, 1955] acquire any interest in the expired Mansfield, Christian, Thomas, Simpson or Lee leases."

Financially, the loss of the Christian, Thomas and Simpson leases was just as great a blow to Frankfort as it was to Snakard. The drilling of the wells to the north and east of the Erwin No. 1 well, when viewed in retrospect, was the exercise of very bad judgment. Frankfort expended its own money in such operations

[21] One on the 160-acre Christian lease and one on the 160-acre Thomas lease.

[22] Of this, 40 acres were in the Christian lease and 80 acres in the Thomas lease. As the area was drilled by others up to July, 1958, there were three producing wells on the Christian lease and six on the Thomas lease. Maps introduced in evidence indicate that two of these wells are possibly on acreage in which a ½ interest would have been assigned to Inland.

[23] In the oil and gas vernacular to toplease is to secure a lease on land covered by an existing lease to the end that the toplease will be effective after the expiration of the existing lease and the interest of one or more lessees thereby eliminated. Topleasing has the same invidious characteristics as claim jumping.

and it thereby validated the Magnolia, Nitner, Clark and Amerada leases. Those operations were in conformity with the November 11, 1954, contracts. If Snakard had been confident in his judgment as to the south leases, he had the right to give notice of intent to drill, and, unless Frankfort had elected to participate and then drilled the wells as the operator, Frankfort would have had no interest in wells so drilled or in the acreage allocable thereto. As it turned out, the leases were not validated and each party lost.[24]

This is not a case of the unjust enrichment of one joint adventurer at the expense of another joint adventurer. Such cases as Blackstock Oil Company v. Caston, 184 Okl. 489, 87 P.2d 1087, and Campbell v. Gooch, 131 Kan. 456, 292 P. 752, do not apply. Those cases considered situations where one joint adventurer, by fraud, inveigled the other joint adventurer to sell at less than actual value. The record now before us shows that bad judgment, bad advice, obstinacy, and misunderstanding joined to produce the loss by both Frankfort and Snakard of leases covering land from which substantial oil production was later secured by others. We can neither rewrite the contracts for the parties nor protect Snakard from the results of the contracts which he made.[25]

Reversed with directions to enter judgment in favor of defendant Frankfort.

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[24] We are aware that Snakard began drilling on the Thomas in an effort to validate. However, litigation involving the continuity of his operations resulted in a settlement whereby his interest was eliminated.

[25] C. Robert Ingram, Inc. v. Chrysler Corporation, supra.

APPENDIX C1

Mr. W. F. Snakard, Wellston, Oklahoma.

Re: All of Section 35 and Sw 4 of Section 36, T15N, R2E, and W 2 of Section 2 and NE 4 of Section 3, T14N, R2E, all in Lincoln County, Oklahoma.

Dear Sir: This letter will set forth the agreement of Frankfort Oil Company, a division of Carstairs Bros. Distilling Co., Inc. with you concerning the acquisition from you of an undivided ½ interest in oil and gas leases covering all mineral interests in the above described land.

It is understood that you have all of the oil and gas leases covering the above described land in your possession except from Amerada Petroleum Corporation, and that you and we have four joint letters addressed to both of us from Amerada agreeing to execute oil and gas leases to us on its interests in the above described acreage.

You agree forthwith to assign to us an undivided half interest in all leases now in your possession covering the above described land and we agree to pay you $1.00 per net acre for such leases.

Notwithstanding the fact that the Amerada letters are addressed to us jointly and therefore place certain joint obligations upon us, it is understood that as between us you are to be solely responsible for complying with the terms of the Amerada letters, copies of which are attached hereto. You agree to indemnify and hold us harmless from and against any and all claims, suits, demands or judgments (including court costs and reasonable attorneys fees) which might arise out of any failure on your part to comply with the terms of the said Amerada letters. It is understood that upon compliance with said Amerada letters, both of us will obtain the oil and gas leases covered by said letters, and thereafter we shall promptly pay you $1.00 per net acre for our interests in such Amerada oil and gas leases.

You agree to endeavor to obtain all existing abstracts covering the above described acreage and you further agree to order supplemental abstracts on all of said acreage bringing them down to date. The expense of said supplemental abstracts shall be shared equally between us. Upon obtaining said supplemental abstracts you agree to furnish all abstracts to Frankfort's attorneys for examination of title. The fees of Frankfort's attorneys for title examinations shall be shared equally between us. We shall have the right to call upon you to satisfy any of the requirements made by our attorneys and you agree to exercise your best efforts to satisfy same and to take full and complete responsibility for doing so and without our having to take any action in this connection. We agree to pay ½ of all traveling expenses, attorneys fees, court costs and other expenses incurred in connection with obtaining the curative matter which we request you to obtain; provided, however, that our maximum obligation shall be $5,000.00 and you are to bear all costs in excess of such maximum.

It is agreed that we shall have the first refusal to purchase all or any portion of your interest in any of the leases covered hereby in the event a bona fide offer of purchase is made to you by some other party and you wish to sell same. If you wish to sell, you shall communicate any bonda fide offer made by others to you and we shall have 48 hours within which to purchase on the same terms and conditions and at the same price as the offer made by the other party.

It is understood that all leases provide only for the usual ⅛ landowners royalty and are not burdened by any overrides, oil payments or other carried interests, and this agreement is being made upon the basis of your representation to us that such is the fact.

If the above and foregoing correctly sets forth our agreement, please so indicate in the space provided below and

return three copies to us, whereupon this letter shall become the contract between us.

Very truly yours,

Frankfort Oil Company, a division of Carstairs Bros. Distilling Co., Inc.,
By Leyton C. Frank

Accepted And Agreed To This 11 Day Of Nov., 1954.
W. F. Snakard.

APPENDIX C2

DRILLING CONTRACT

This Agreement made this 12th day of October A.D., 1954 by and between W. F. Snakard hereinafter designated as the Contractor and Frankfort Oil Company, a corporation with petroleum division offices at Bartlesville, Oklahoma, hereinafter designated as Company. Witnesseth:

That, for and in consideration of the mutual promises and agreements hereof, the parties enter into the following agreement, to-wit:

First: The Contractor agrees to begin on or before Dec. 6, 1954 the actual drilling of a well for the production of crude petroleum and natural gas at the location designated as the Company's Well No. 1 in the Center SW SE of Sec. 35 Twp. 15N. R. 2E on the Stanolind Farm; situated in Lincoln County in the State of Oklahoma and to diligently prosecute in a workmanlike manner the drilling thereof to adequately test the Arbuckle expected at an approximate depth of 5700 feet unless expressly accepted or abandoned at a lesser depth by direction of the Company: The Contractor thereupon as full compensation shall be entitled to receive pay for the actual number of feet drilled at the drilling rate as hereinafter provided; no payment, however, to be due in case of abandonment due to failure or

fault of Contractor or his employees, and in such latter case Contractor shall not be entitled to pay for drilling or shut down time on the abandoned hole, and shall bear the full cost of moving said rig to new location, as well as cost of casing or other Company property lost or destroyed at abandoned hole.

It is understood that Contractor does not by reason of this contract become an employee of the Company but is an independent contractor not subject to the direction and control of the Company except as to the results to be accomplished.

Contractor shall furnish at his sole risk and expense all labor, tools, machinery, services and supplies of whatsoever character necessary or proper to complete said well. Only such exceptions and additional costs as are hereinafter specifically provided will be furnished by the Company.

Contractor agrees to set and cement surface pipe and to continue drilling to the expected producing horizon above mentioned unless otherwise specified by Company. Contractor agrees to properly run, set and cement a string of casing at the expected producing horizon or at any other depth above such horizon as may be specified by Company's representative, then shut down for a reasonable length of time as is necessary to permit cement to set, drill plugs, prove casing is tight and outside waters are shut off, then continue testing or drilling as specified by Company. If Company specifies a permanent string of casing to be set in a horizon above contract depth and Company desires to complete well at approximate contract depth then such casing furnished by Company shall be of sufficient size to allow completion of the well to contract depth. In such case the only cost to Company for setting said additional casing shall be for cementing and such day work as may be specified for the testing of such horizon and shall be at the rate provided in Paragraph 2 hereof for day work.

Contractor agrees to replace any equipment furnished by the Company in the event it should be destroyed or damaged through his negligence or that of his employees, or that of any person, other than the agents of the Company suffered by him to visit said well; to return to the Company upon the completion of said well or the abandonment thereof, the equipment furnished by it in as good condition as when received by him, ordinary wear and tear and the action of the elements alone excepted.

During the course of drilling with rotary tools Contractor shall not pull drill pipe from well when drilling through any strata in which a heavy flow of gas is expected until the hole has been filled to the top with a heavy mud-laden fluid; shall keep good mud separate from sand and lime; shall maintain rotary mud in condition at all times so that satisfactory cuttings of the formation drilled will be returned to the surface. Contractor shall notify Company when well approaches a probable producing horizon and shall not drill into or through an oil or gas bearing formation unless so authorized by the Company.

Contractor agrees to furnish daily drilling reports to the Company on forms furnished by it and to keep secret all information pertaining to said well from all persons, other than authorized representatives of the Company and prohibit all persons other than his employees and the authorized agents of the Company from entering said rig or remaining in close proximity thereto.

Contractor agrees to do such coring as may be required when specified by the Company and to assist with his crew and equipment in running drill stem tests, electric surveys or other approved methods of special testing as may be furnished and designated by the Company. In the event said well is non-productive of oil or gas in paying quantities when prospective producing zone at approximate contract depth is reached Contractor shall furnish equipment and crew to assist in salvaging pipe from hole and in plugging and abandoning well.

Contractor shall inspect and examine such machinery, casing or other equipment as may be furnished by the Company and if any defects be found therein sufficient to make said equipment unsafe, to immediately notify the Company thereof and to assume all responsibility for any damage or loss arising from such defects except such as may have been reported and such as may be impossible to discover by a reasonable inspection.

Contractor shall remove at his own expense the fires, boilers or other hazards to a safe distance from the well when oil or gas in sufficient quantities to endanger the rig equipment or materials is found therein.

Contractor shall comply with workmen's compensation and employer's liability laws of the state in which work is to be performed and hold Company harmless from any and all liability for damage to the person and/or property of any and all persons resulting from the operations of Contractor. At his sole expense and before drilling operations are commenced Contractor shall submit valid policies for Company approval and certificates of insurance thereof with minimum limits as follows: workmen's compensation and employer's liability $25/50,000 and $25,000 per person where stipulation of state requires death limit; M. C. public liability for bodily injury $25,/50,000 and property damage $25,000; for such trucks and automotive equipment as Contractor may use in performing work herein specified, public liability of $25,/50,000 and property damage of $10,000 shall be provided. Contractor agrees to pay all State and Federal Social Security taxes or contributions imposed by any governmental authority with respect to the employment of others, and to reimburse the Company for any such taxes or contributions for which the Company may be secondarily liable through his failure to discharge his primary liability. The "Fair Labor Standards Act of 1938" and regulations of the Wage and Hour Division of the Department of Labor shall be complied with by Contractor insofar as said Act may be applicable.

Contractor agrees to comply with all laws and regulations of any legal authority having jurisdiction of the matters involved in this contract.

Contractor further agrees as far as practical to drill a vertical hole, and in no case shall the hole when completed have a deviation of more than five (5) degrees from vertical. Company shall have the right (but is not required) to take slope tests every five hundred (500) feet, failure to take such tests, however, in no way relieving Contractor of obligations hereunder. If any such tests show the hole to deviate more than five (5) degrees from vertical or perpendicular, Contractor shall redrill the hole if desired by Company.

In case the Contractor shall neglect to supply enough properly skilled workmen or suitable drilling tools, machinery and appliances, or shall neglect or discontinue the work of drilling the well for the space of five days, without the consent of the Company, such neglect or discontinuance of itself shall work a forfeiture of all rights and claims of the Contractor under this agreement, and without notice or demand by the Company. The Company at any time after such forfeiture shall have the right to take possession of the well, discontinue the drilling thereof and at its pleasure dismantle or abandon the same without liability to the Contractor for any portion of the contract price above mentioned. The Company, if it so elects, also shall have the right after such forfeiture to take possession of the well and the drilling tools, machinery and appliances of the Contractor and drill the well to completion. In case the Company shall succeed in completing the well, the cost of operations, without any allowance to the Contractor for the use of such drilling tools, machinery and appliances, shall be deducted from the contract price, and the balance, if any, paid to the Contractor. However, if the Company should not succeed in completing the well, it shall not be liable to the Contractor in any sum whatever, except to return such drilling tools, machinery and appliances to the

Contractor in as good condition as when received, natural wear and tear excepted.

Delay in performance hereunder shall be excused if caused by fire, flood, civil disturbance, act of God, war, insurrection or any other cause similar or dissimilar, if same is beyond the power of performing party to prevent or correct, but performance shall continue as soon as said cause is removed.

Contractor agrees not to assign this contract without the written consent of the Company.

1. Furnish rig and auxiliary equipment.

2. Drill 9" hole to total depth.

3. Furnish bits, water, fuel and $500.00 mud.

Second: The Company agrees to pay Contractor upon full performance of this agreement and the completion and delivery of the well to it free from liens or valid claims for liens Eight and 66/100 Dollars ($8.66) per foot, Company shall pay the rate of Thirty-five and no/100 ($35.00) dollars per hour for any day work requested by Company with drill pipe and rotary tools, and Twenty and no/100 ($20.00) dollars per hour for such day work without drill pipe.

Company shall not be liable to pay for any time waiting for cement to set, unless otherwise specified herein.

Company shall pay day rate while circulating, coring, or waiting on orders when drilling in prospective pay horizon, unless otherwise provided; pay for labor only while work on the drilling of well is shut down waiting on it to furnish casing or other materials herein provided, but it shall not be liable to Contractor for any damages he may sustain on account of such reasonable delay.

Company agrees to furnish:

1. Location, road and pits.

2. Mud in excess of $500.00.

3. Surface casing and oil string.

4. Pay for cement and cementing of surface and oil string.

5. Special services (electric logging, sidewall and conventional coring, drill stem tests, etc.

Anything in this contract to the contrary notwithstanding it is agreed between the parties that in the event the drilling of this well is halted or shut down before completion because of any order, rule or regulation of any governmental agency, either State or Federal, for any reason whatsoever, the Contractor will be entitled to and will make charge to the Company only for reimbursement of the actual expense of labor and material and direct cost incurred in drilling operations up to and not beyond the time Company notifies Contractor such shut down order is effective and payment on that basis shall relieve Company of any further liability under this contract.

In Witness Whereof the Contractor has hereunto subscribed or caused his name to be subscribed, and the Company has hereunto caused its name to be subscribed, the day and year above written.

By W. F. Snakard-11-11-54

Frankfort Oil Company

By [Illegible]

APPENDIX C3

October 12, 1954

Mr. W. F. Snakard, Wellston, Oklahoma.

Re: All of Section 35 and SW/4 of Section 36, T15N, R2E; and W/2 of Section 2 and NE/4 of Section 3, T14N, R2E, all in Lincoln County, Oklahoma.

Dear Sir: We are the owners of an undivided ½ interest in the oil and gas leases covering the above described

land. We have entered into an agreement with you to deepen an old hole in the NW SW SE of Section 35-15N-2E, and a portion of that agreement is covered by the attached drilling contract. This letter will set forth the balance of the terms of our agreement.

Notwithstanding the fact that we only own an undivided half interest in the above land, including the land upon which the drilling is to be performed, we agree to pay the entire cost of drilling as set forth in said drilling contract; provided, however, that we shall be entitled to reimburse ourselves for 200 per cent of ½ of the cost of said drilling as set forth in more detail below.

Before going into such detail, however, we wish to cover certain other matters as follows.

Notwithstanding any provision in said drilling contract attached hereto to the contrary, it is expressly understood that there is an old hole in the above described land and that you agree to conduct all operations on the basis of going into said old hole and deepening it, including whipstocking if necessary.

It is further understood that you are obligated to deepen the old hole to a depth sufficient to adequately test the Arbuckle expected at an approximate depth of 5700 feet. If you do not reach said depth, then, regardless of whether it is your fault or not and even if it is due to causes beyond your control, you shall be entitled to no payment under said drilling contract.

It is understood that you will drill the hole and place it in such condition that 7 inch casing can be run to total depth.. We shall have the sole decision as to whether or not casing is run and if we decide to run casing, you agree to do so at the day work price set forth in said drilling contract attached hereto.

It is further understood that your right to receive any compensation whatsoever under said drilling contract is

urther conditioned upon your satisfying the title require-
ents of Frankfort's attorneys upon all of the oil and gas
eases covering all of the land described in the caption of
is letter.

In other words, upon completion of the drilling require-
ents set forth in said drilling contract and in this letter
nd upon your furnishing us with titles to the oil and gas
eases covering the land described in the caption of this
tter satisfactory to our attorneys, you shall then be en-
tled to prompt payment of the price set forth in said
rilling contract attached hereto.

If the test well covered by this letter is productive of
il or gas, Frankfort shall become the operator of all the
roperties covered by this agreement. Frankfort shall so
perate on the basis of the printed form of operating agree-
ent attached hereto and made a part hereof, except as
llows. That portion of said printed operating agreement
roviding that a "non-participating party" in any well
all lose their interest in such well and in the lease upon
hich the well is located is hereby changed to provide as
llows. If any well is productive in which you are a "non-
articipating party", Frankfort Oil Company shall own all
ipe and equipment in or on said well and $\frac{7}{8}$s of all working
terest production from such well, and you shall own $\frac{1}{8}$ of
l working interest production from such well; provided
owever, that at such time as Frankfort Oil Company, its
uccessors or assigns, shall have received, out of the net
roceeds from the sale of $\frac{3}{8}$s of the working interest pro-
uction from said well which otherwise would have be-
nged separately to you (after deducting that portion
tributable to such interest of the royalties and the ex-
enses incurred in operating the well up to such time and
verance, production and like taxes paid or payable on said
of the working interest production) a sum of money
ual to 200 per cent of the $\frac{1}{2}$ of the cost and expenses
hich would have been borne by you had such well been
rilled, completed and equipped at the cost and expense of

both of us jointly, Frankfort Oil Company shall thereupon transfer and assign to you an additional 3/8 of the working interest in said well and the casing and equipment therein and thereon and the subsequent production therefrom, so that you will then have a total of 1/2 of the working interest.

It is understood that we shall be entitled to bill you currently for 1/8 of the operating expenses of the producing properties and that you shall pay same personally as they are billed, and this provision shall apply at all times immediately after any production is obtained and shall not be delayed during the reimbursement period provided above.

It is understood that a number of the oil and gas leases covering the acreage described in the caption of this letter contain drilling clauses and that Frankfort shall be entitled to comply with any of the drilling clauses which it chooses to comply with and if you do not wish to be a participating party in the costs of drilling any of such wells, the provisions of this letter shall apply thereto just as to any other wells to be drilled on the properties covered hereby.

If the above and foregoing correctly sets forth our understanding, please so indicate in the space provided below and thereupon this letter shall become the contract between us.

Very truly yours,

Frankfort Oil Company, a division of Carstairs Bros. Distilling Co., Inc.

By Leyton C. Frank

Accepted And Agreed To This 11 Day of Nov., 1954.
W. F. Snakard.

APPENDIX C4

Joint Operating Contract
(Oil, Gas And Other Minerals)

This Agreement, made and entered into by and between W. F. Snakard of Wellston, Oklahoma (hereinafter called "Non-Operators" whether one or more) and Frankfort Oil Company, a division of Carstairs Bros. Distilling Company, Inc. (hereinafter called "Operator"), Witnesseth That:

Whereas, Operator and Non-Operators respectively are the owners of the oil and gas leases covering the lands described in "Exhibit A" hereto attached and made a part hereof, hereinafter for convenience referred to as "Joint Leases," and it is the desire of the parties hereto that Operator shall be in charge of exploration, development and other operations under said Joint Leases in accordance with the agreements and provisions hereinafter contained:

Now, Therefore, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. General Duties Of Operator. Operator shall have, subject to the terms, provisions and limitations hereinafter expressed, exclusive charge, control and supervision of all operations of every kind to be conducted on the Joint Leases for the exploration for and development, production, treating and handling of oil, gas and other minerals therefrom, as well as the payment of all taxes and other charges (except delay rentals) which may arise or become due or payable in connection with such operations.

Operator shall, on behalf of the parties, initially pay and discharge all costs and expenses incurred in the development and operation of the Joint Leases hereunder; provided, however, that Non-Operators shall, if requested by Operator, advance their proportionate part of the anticipated development and operating costs and expenses in

accordance with an estimate to be made by Operator not less than ten (10) days in advance of the month in which the costs and expenses are to be incurred. Adjustments between estimates and actual costs shall be made by Operator at the close of each calendar month, and the account of each Non-Operator shall be adjusted accordingly.

Operator shall secure and furnish all material, labor and services necessary for operations hereunder; provided, however, that the number of employees, the selection of such employees, the hours of labor, and the compensation for services to be paid any and all such employees, shall be determined by Operator, such employees shall be employees of Operator.

At such times as tubular goods and other equipment are needed for operations hereunder and Operator is compelled to furnish, from its warehouse or other properties, materal acquired or purchased at values or prices in excess of those determined in accordance with the provisions of this agreement, or the accounting procedure attached hereto, Operator will attach to a Job Order Request a notification to that effect and forward same to Non-Operators for approval; then, unless Non-Operators advise of their election to supply in kind at the location, or at the railway receiving point nearest thereto, their proportionate share of any such material of like grade and quality, and forth with deliver the same, Operator will furnish all such material, to the Joint Account and will charge Non-Operators, or such ones of them as do not make such election, for their proportionate share thereof on the basis of Operator's direct costs and expenses (not including any overhead charges) incurred in acquiring or purchasing and shipping such material so transferred and in moving it to the Joint Leases.

Operator shall keep an accurate record of the Joint Account hereunder showing the costs and expenses incurred and charges made and all credits and returns made and received, which record shall be available at all reasonable

times for the consideration, examination and inspection of each of Non-Operators and its duly authorized representatives.

2. Ownership Of Production And Charges To Joint Account. Subject to the terms of paragraph 4 hereof, all production from the Joint Leases shall be owned by the parties hereto in the proportion that the interest of each of the parties in the Joint Leases bears to the total of the interests in the Joint Leases of the parties hereto, the interest of each party being as follows:

W. F. Snakard—⅛ working interest.

Frankfort Oil Co.—⅞ working interest until Frankfort receives the monies provided in Letter Agreement dated October 12, 1954 *than* Snakard to be owner of 4 8 working interest and Frankfort owner of 4 8 working interest.

All charges made to the Joint Account as provided herein shall be borne and all credits and returns shall be shared by the parties hereto in the same proportion in which the parties own the production from the Joint Leases.

Operator shall charge the Joint Account with all costs and expenses incurred in connection with the operation of the Joint Leases as herein contemplated. Such charges shall be in accordance with "Exhibit B" hereto attached and made a part hereof for all purposes. Operator shall bill 'Non-Operators for Non-Operators' share of such charges, and payments therefor shall be made by Non-Operators under the Joint Account in accordance with said "Exhibit B."

3. Liens. Each Non-Operator grants to Operator a lien on its interest in the Joint Leases, the production therefrom, and any and all fixtures, improvements and personal property now or hereafter located thereon to secure the payment of its proportionate part of all investments, made by Operator for, and costs and expenses incurred by Operator against, the Joint Account hereunder, which lien

may be enforced as any other mortgage lien. Should any Non-Operator fail to pay its proportionate part of all statements rendered as provided in "Exhibit B" within fifteen (15) days therein stipulated, Operator shall have the right at its option at any time thereafter, such default continuing, to foreclose said lien upon the interests of Non-Operator in default.

4. Drilling And Development Of Joint Leases. All wells drilled on the Joint Leases for the account of the parties hereto, shall be drilled under contract based on the usual rates prevailing in the field in which the Joint Leases are located or upon competitive bidding, as the parties may direct. Operator, if it so desires, may employ its own tools and equipment in the drilling of wells; but same shall be drilled either at the prevailing rate in the field or upon competitive bidding, as the parties may direct. All drilling, whether by Operator or others, shall be under contracts approved by the parties hereto, which contract shall contain appropriate provisions that any well drilled on the Joint Leases when completed shall not deviate in excess of 5 degrees from perpendicular.

No wells shall be drilled at the cost and expense of the Joint Account unless mutually agreed upon by the parties hereto as to the depth and location of each such well. Operator shall secure the written approval of each of the Non-Operators before incurring against the Joint Account any item of expenditure, which item itself is in excess of Two Thousand Dollars ($2,000.00), except in the drilling, equipping and completing of any well as to which well or wells the parties mutually agree, and except in the case of expenses reasonably incurred in safeguarding life and property in case of a blowout, explosion, fire, flood, storm, hurricane, or catastrophe or other sudden emergency. Operator shall submit to Non-Operators an Authority for Expenditure form in triplicate for *approval* by Non-Operators in connection with any construction, development or operational expenditure in excess of the maximum amount

permitted Operator hereunder without prior approval of Non-Operators. The Authority for Expenditure form as submitted shall include sufficient detail concerning the estimated cost to enable Non-Operators to make a reasonable analysis on which to base approval.

Should any party hereto desire to drill a well on the Joint Leases, the party so desiring to drill shall give written notice of its desire to commence operations for the drilling of the well to each of the other parties and in such notice shall state the depth to which it desires to drill such well, the location thereof, and whether it intends to contract with an independent contractor for the drilling of such well or to drill the well itself. Each party so notified shall within ten (10) days after receipt of such notice advise in writing the party giving notice whether or not the party receiving notice is willing to join in the drilling of said well. If within such ten-day period all parties receiving such notice agree that the well should be drilled and so notify the party originally desiring to drill the well, then Operator shall drill such well for the Joint Account and at the joint cost of the parties, and such well shall for all purposes be a jointly-owned well. If within such ten-day period any party or parties hereto shall notify the party desiring to drill that it or they do not desire to participate in the cost and expense of drilling, equipping and completing the well, they shall be "Non-participating Parties," as to such wells. All other parties shall be participating parties as to such well. The cost and expense of such well shall be borne by the Participating Parties, each bearing that portion thereof which its interest in the Joint Leases bears to the total interest therein of all Participating Parties. The Non-Participating Parties shall not be responsible for any part of such cost and expense. If all other parties give such notice and become Non-Participating Parties, the party desiring to drill may nevertheless drill, complete and equip the well at its own cost and expense. If Operator is a Participating Party in such well, it shall be in charge of

drilling same under the terms hereof at the expense of the Participating Parties. Operations for the drilling of any well under the provisions of this paragraph must be commenced within ninety (90) days after the initial notice is given, and not thereafter.

Any well drilled on the Joint Leases by any party hereto as permitted in the provisions of the preceding paragraph and which is not drilled at the cost and expense of the Joint Account, and all pipe and equipment in or on said well and all production from such well, and all remaining acreage on the lease on which such well is located except acreage allocated to any producing well thereon, shall be owned entirely by the Participating Parties drilling the same whether it is completed as a producer or as a dry hole. If the well is a dry hole, all salvable equipment therein and thereon shall be owned by the Participating Parties, and they shall plug and abandon the well at their sole cost and expense.

Operations to dually complete any well or to recomplete any well in a different horizon from that in which such well is producing shall be treated as operations for the drilling of a new well under this Paragraph 4.

5. Taking Products In Kind: Marketing Of Products. Each Non-Operator shall have the right and privilege of receiving in kind and separately disposing of its portion of the oil, gas and other minerals produced and saved from the Joint Leases. Such production shall be delivered to the Non-Operator involved into the pipe line or lines to which the well or wells on the Joint Leases may be connected or into storage tanks on the Joint Leases, if any are provided at the expense of the parties, or into tanks furnished by the Non-Operator. Each Non-Operator shall bear any extra expense incurred by Operator in delivering in kind Non-Operator's portion of the production from the Joint Leases.

Should any Non-Operator hereunder be in arrears in its payments to Operator, as herein provided, Operator shall

have the right, upon demand, to receive from the purchaser of the production such Non-Operator's portion of the proceeds and apply the proceeds on amounts in arrears.

6. Insurance—Compliance With Laws And Regulations.

(a) As to all operations hereunder, Operator shall carry for the benefit and protection of the parties hereto Workmen's compensation insurance meeting the requirements of law, and such other insurance as Operator may in its sole judgement deem necessary.

(b) All damage or injury to the joint property shall be borne by the parties hereto in proportion to their interests therein. The liability, if any, of the parties hereto in damages for claims growing out of personal injury to or death of third parties or injury to or destruction of property of third parties resulting from the operations conducted hereunder shall be borne in proportion to their interests in the joint property.

7. Non-Operators' Rights And Privileges. Each Non-Operator shall have the following specific rights and privileges:

(a) Access to the Joint Leases at all reasonable times to inspect the operations hereunder.

(b) The right to inspect the logs, samples, and cuttings from any and all wells drilled hereunder and to receive copies of the logs.

(c) The right to inspect and audit at all reasonable times the Operator's books, records and invoices pertaining to any matter of accounting arising hereunder.

8. Liability Of Parties. The liability of the parties hereunder shall be several and not joint or collective. Each party shall be responsible only for its obligations as set out herein and shall be liable only for its proportionate share of the cost of operation hereunder. Nothing herein shall

be construed as an assignment or transfer of the leases or an interest therein as between the parties hereto.

9. Right Of Parties To Withdraw Or Assign. The leases covered by this agreement shall not be surrendered in whole or in part unless the parties mutually consent thereto. Should any party at any time desire to surrender the leases subject hereto and the other party or parties should not agree or consent to such surrender, the party desiring so to surrender shall assign, without express or implied warranty of title, all of its interest in such leases to the party or parties not desiring to surrender. In such assignment the assigning party shall cover only its interest in the leases subject hereto and shall sever therefrom its interest in all pipe, casing, valves, tanks, warehouses and buildings and any and all other property and equipment (whether similar or dissimilar to such specific enumeration) located and installed in or on the Joint Leases or the well or wells thereon as to which there exists the right of removal as a contractual right in and under the Joint Leases and which therefore are personal property as distinguished from fixtures to the realty, and the interest of such party in said property and equipment shall be assigned and transferred by it in a separate assignment or bill of sale to the party or parties not desiring to surrender. No consideration shall be paid for the assignment of the interest in the leases other than the release of the assigning party from thereafter accruing obligations hereunder, but as consideration for the bill of sale the assigning party shall be entitled to be paid for its interest in such personal property and equipment so assigned at the salvage value thereof, determined as provided in "Exhibit B." From and after the making of such assignment and bill of sale, the assigning party shall have no further interest in the leases assigned, and such assigning party shall be relieved from all obligations thereafter (but not theretofore) accruing hereunder.

Each party hereto owning an undivided interest in the Joint Leases waives any and all rights it might have to

partition the Joint Leases and have set aside to it in severalty its undivided interest therein. Before the sale by any party hereto of its interest in the Joint Leases, or any of them, the other parties hereto shall be given the refusal thereof at the price offered in good faith by a third party and shall have the preferred right to purchase at the price stated, which right shall be exercised within ten (10) days after receipt of written notice of the offer made by a third party. Should more than one party hereto exercise the preferred right to purchase, the interest in the Joint Leases shall be assigned to them in proportion to their several interests then held in the Joint Leases. This provision shall not apply in the event of a sale to a subsidiary, affiliated or successor company of any party hereto, or to the sale by a party hereto of its interest in the Joint Leases as a part of the sale of all its assets.

10. Responsibility Of Operator. In the conduct of operations hereunder, Operator shall be obligated to use only the care and diligence customarily exercised by a prudent operator in the area in which the land is located, and Operator shall not be liable in damages to Non-Operators for any act done or omitted in good faith in the performance of the provisions of this agreement or for errors of judgment or for loss or damage to any property and equipment owned by the parties hereto not resulting from the gross negligence or willful misconduct of Operator.

11. Resignation of Operator And Appointment Of Successor. Should Operator or any successor operator hereunder sell or otherwise dispose of its interest in the Joint Leases (except to a subsidiary, affiliated or successor company), it shall thereupon cease to be Operator hereunder. Operator or any successor operator may resign its duties as Operator hereunder. Should Operator or any successor operator for any cause cease to be Operator hereunder, the parties hereto, (including the successor or successors in interest of Operator) shall designate another Operator to act hereunder from among the parties hereto.

Should Operator or any successor operator hereunder resign as Operator, its rights, titles and interests in the Joint Leases shall be unaffected by such resignation, but it shall thereupon become one of the Non-Operators hereunder and shall thenceforth be bound by the terms and provisions hereof as a Non-Operator. Any party hereto designated as Operator to succeed the Operator herein named shall thereupon succeed to all the duties, powers, obligations, rights and authority given to the Operator herein named with respect to all operations of every kind thereafter conducted on the Joint Leases for developing and operating the leases and producing, treating, and handling of oil, gas and other minerals therefrom, as well as the payment of taxes and other charges which may arise or become due in connection with operations.

12. Rental Payments. Each party holding an oil and gas lease which is subject to this agreement shall, before the due date, pay all delay rentals which may become due under the lease or leases contributed by it. The burden and expense of paying such rentals shall fall entirely upon the party required to make payment thereof hereunder. In event of failure to make proper payment of any delay rental through mistake or oversight where such rental is required to continue the lease in force, there shall be no money liability on the part of the party failing to pay such rental; but such party shall make a bona fide effort to secure a new lease covering the same interest, and in event of failure to secure a new lease within a reasonable time, the interest of the parties hereto shall be revised so that the party failing to pay any such rental will not be credited with the ownership of any lease on which rental was required but was not paid.

13. Overriding Royalties, Oil Payments, Et Cetera. If any of the Joint Leases covered hereby are burdened with any royalties, overriding royalties, payments out of production, or any other charges in addition to the one-eighth (1/8) royalty, the party contributing any such lease shall

bear and assume same out of the interest attributable to it hereunder.

14. Abandonment Of Wells. In case any jointly-owned well or wells drilled hereunder shall hereafter prove to be a dry hole, Operator shall plug and abandon such well or wells and salvage all material and equipment therefrom for the benefit of the parties hereto in accordance with the provisions of "Exhibit B", attached hereto. No producing wells shall be plugged and abandoned without the mutual consent of the parties hereto, and if the parties are unable to agree upon the abandonment of any well or wells, then the party or parties not desiring to abandon such well or wells shall tender to the party or parties desiring to abandon same a sum equal to its or their proportionate share in the reasonable salvage value of the material and equipment in and on said well. Upon receipt of such sum, the party or parties desiring to abandon such well shall transfer and assign without warranty of title to the party or parties desiring to retain the same its or their interest in all of such material and equipment. By a separate assignment, also without warranty of title, the party or parties desiring to abandon such well shall also transfer and assign to the party or parties desiring to retain the same its or their interest in said leases as to the horizon or formation from which said well is then producing in and to the land attributable to said well by the well pattern on which said well was drilled.

Any such assignments shall vest the interest so assigned in the party or parties electing not to abandon any such well proportionately. The party or parties so assigning under this provision shall not be liable after delivery of such instruments for any cost or expense thereafter incurred in connection with such well, but it shall be liable for its proportionate part of the cost and expense incurred before the delivery of said instruments.

15. Loss Of Title. Any loss of title, whether partial or complete, as to any of the Joint Leases contributed by the

parties hereto, shall be borne entirely by the party contributing such Joint Lease as to which loss or failure of title occurs, and such party's interest in the Joint Leases shall be reduced in proportion to any such loss. In the event of loss of title to any of the Joint Leases, in whole or in part, or should any such lease terminate or be released and thereafter a party other than the party originally contributing such lease hereto makes such lease, or portion thereof or interest therein, subject to this contract, Operator shall reimburse the original contributing party out of such funds as may be collected from the new party (but only to the extent that such funds are collected from said new party) for loss suffered by reason of such original party's payment of its proportionate part of the cost and expense charged to the Joint Account by virtue of such lease, or portion thereof or interest therein, prior to the time same was lost by such original party.

16. Force Majeure. In the event any party hereto is rendered unable, wholly or in part, by force majeure to carry out its obligations under this contract other than the obligation to make payments of amounts due hereunder, it is agreed that, upon such party's giving notice and reasonably full particulars of force majeure in writing or by telegraph to the other parties hereto within a reasonable time after the occurrence of the cause relied upon, then the obligations of the party giving the notice, so far as they are affected by force majeure, shall be suspended during the continuance of any inability so caused, but for no longer period; and the cause of the force majeure shall, so far as possible, be remedied with all reasonable dispatch.

The term "force majeure" as employed herein shall mean any cause not reasonably within the control of the party claiming suspension.

The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and the above-mentioned requirement that any force majeure

shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

17. Notices. All notices herein provided for shall be mailed or sent to Operator at P. O. Box 921, Bartlesville, Oklahoma and to Non-Operators as follows:

W. F. Snakard at P. O. Box 133, Wellston, Oklahoma.

18. Term. Unless terminated by agreement of all parties hereto, this contract shall continue in force and effect as long as the Joint Leases, or any of them, remain in force and effect, and thereafter until all materials and equipment have been salvaged or removed and a final settlement has been made between the parties hereto.

19. Parties Bound. This contract shall constitute a covenant running with the mineral estate or estates and, subject to the other provisions herein contained, is assignable and shall be binding upon the parties hereto and their heirs, successors and assigns. All parties hereto are referred to in the neuter gender.

Executed this the 11 day of November, A.D. 1954.

W. F. Snakard-11-11-54

Exhibit A

(Omitted—see Appendix C1)

Exhibit B

(Omitted—see T.R. 39 et seq)

APPENDIX C5

Bartlesville, Oklahoma
October 14, 1954

Mr. W. F. Snakard, Wellston, Oklahoma.

Dear Mr. Snakard: Reference is made to our Letter of Agreement of October 12, 1954 relative to acquisition from you of an undivided $\frac{1}{2}$ interest in oil and gas leases covering all mineral interests in the land described in said Letter of Agreement.

It is understood that since executing said Letter of Agreement with you that you were unable to obtain leases on partial interest in the tracts set out below without giving the Lessor a $\frac{1}{4}$ royalty instead of the usual $\frac{1}{8}$ royalty.

Lease covering 10 acre interest out of an 80 acre tract described as the S/2 SE/4 Sec. 35, T15N, R2E, and; 5 acre interest out of an 80 acre tract described as the E/2 SW/4 Sec. 35, T15N, R2E and; 5 acre interest out of an 80 acre tract described as the N/2 SE/4 Sec. 35, T15N, R2E and; $2\frac{1}{2}$ acre interest out of an 80 acre tract described as the E/2 NE/4 of Sec. 35, T15N, R2E. All in Lincoln County, Oklahoma.

It is agreed this additional royalty payment will be absorbed by you and paid by you out of your $\frac{1}{2}$ interest in said leases.

If this represents your understanding of this Supplemental Agreement, please indicate your approval and acceptance in the space provided below and return the original and two copies to us.

Yours very truly,

Frankfort Oil Company
Leyton C. Frank, Manager
Land and Lease and Partnerships

Approved and accepted this 11 day of Nov., 1954 W. F. Snakard.

APPENDIX C6

Bartlesville, Oklahoma
October 14, 1954

Mr. W. F. Snakard, Wellston, Oklahoma.

Dear Mr. Snakard. This has reference to our Letter of Agreement of October 12, 1954 relative to your drilling a test well on a block of acreage which we have acquired a ½ interest from you covering Section 35 and SW 4 of Section 36, Township 15 North, Range 2 East and the W 2 of Section 2 and NE 4 of Section 3, Township 14 North, Range 2 East, Lincoln County, Oklahoma.

Said Letter of Agreement, is to be changed in the following respect:

1. Paragraph 1—in the third line, delete deepen an old hole in the NW SW SE and substitute in lieu thereof drill a well in the Center SW SE.

2. Paragraph 4 shall be deleted.

3. Paragraph 5—on Page 1 of said Agreement shall be modified in the following respect:

(a) In line 1 and 2, delete "to deepen the old hole" and substitute in lieu thereof, "to drill new hole".

If this represents your understanding of the modification agreed upon in said Letter of Agreement, please indicate your approval and acceptance thereto by signing in the space provided below and return the original and two copies to us.

Yours very truly,

Frankfort Oil Company
Leyton C. Frank, Manager
Land, Lease and Partnerships

Approved And Accepted This 14 Day of Nov., 1954.
W. F. Snakard

[Summonses were issued December 20, 1955, setting out the answer date as January 23, 1956. Sheriff's returns show services on December 22, 1955.]